

DOCKET NO. HHB-CV-18-6046738 ¹	:	SUPERIOR COURT
	:	
DANBURY MALL LLC	:	JUDICIAL DISTRICT
	:	OF NEW BRITAIN
VS.	:	TAX APPEALS
	:	
CITY OF DANBURY	:	MARCH 24, 2022

MEMORANDUM OF DECISION

INTRODUCTION:

These consolidated litigations are real property tax appeals brought pursuant to General Statutes § 12-117a and § 12-119. The two appeals challenge the valuations and property tax assessments of the City of Danbury (Danbury) concerning three related parcels of real estate. The consolidated matters were tried to the court over several days in December 2021 and January 2022.

OFFICE OF THE CLERK
SUPERIOR COURT
JUDICIAL DISTRICT OF
NEW BRITAIN
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¹ This matter was consolidated with the matter of *MS Portfolio LLC v. Danbury* (Docket No. HHB-CV-18-6046739) and the two consolidated matters were tried together. This memorandum of decision is applicable to and decides both matters.

*Electronic notice sent to all counsel of record
and to the official reporter. A. J. Jordanopoulos, 3/24/22*

FINDING OF FACT:

Based upon the evidence introduced at trial, the court makes the following findings of fact:

1. The three parcels of real estate, along with the improvements upon each, that are the subject of this litigation are:
 - a. A parcel of real estate comprising approximately 69.58 acres of land, and the improvements thereon, located at 7 Backus Avenue in Danbury and identified by tax ID number F/17//2// (Mall Proper). The foregoing parcel will be referred to as the "Mall Proper."
 - b. A parcel of real estate comprising approximately 12.23 acres of land, and the improvements thereon, located at 7 Backus Avenue in Danbury and identified by tax ID number F/17//14//. The foregoing will be referred to as the "Sears Property."
 - c. A parcel of real estate comprising approximately 9.49 acres of land, and the improvements thereon, located at 7 Backus Avenue in Danbury and identified by tax ID number F/17//15//. The foregoing will be referred to as the "Former Filenes Property."

2. At all times relevant to this matter, the Mall Proper was owned by Danbury Mall LLC, which was responsible for the payment of real estate taxes assessed thereon.
3. At all times relevant to this matter, the Former Filenes Property was owned by Danbury Mall LLC, which was responsible for payment of the real estate taxes assessed thereon.
4. At all times relevant to this matter, the Sears Property was owned by MS Portfolio LLC, which was responsible for the payment of real estate taxes assessed thereon.
5. Danbury Mall LLC and MS Portfolio LLC are related companies which are both owned by the Macerich Company.² Danbury Mall LLC and MS Portfolio LLC will be referred to collectively as the "Plaintiffs."
6. On October 1, 2017 (Valuation Date), Danbury determined that the full fair market value of the Mall Proper was \$336,708,000 and assessed taxes based upon 70% of the foregoing value.
7. On the Valuation Date, Danbury determined that the full fair market value of the Former Filenes Property was \$49,349,000 and assessed taxes based upon 70% of the foregoing value.
8. On the Valuation Date, Danbury determined that the full fair market value of the Sears Property was \$32,382,700 and assessed taxes based upon 70% of the foregoing value.

² MS Portfolio LLC is a joint venture with Macerich as one of the two owners/joint venturers, directly or indirectly.

9. The plaintiffs timely challenged each of the foregoing assessments at the Danbury board of assessment appeals, but the board declined to make any change. The plaintiffs timely appealed the board's denials to this court and asserted claims pursuant to General Statutes §12-117a and § 12-119 concerning the assessments for each of the three properties on the grand lists for 2017, 2018, 2019, and 2020.
10. The Mall Proper, the Former Filenes Property and the Sears Property make up portions of the Danbury Fair Mall.
11. The Danbury Fair Mall comprises a mall concourse³, four anchor department store areas, and the Former Filenes Property. As of the Valuation Date the four anchor department stores were JC Penney, Lord & Taylor, Macy's, and Sears/Primark.
12. The Mall Proper comprised the mall concourse, and many businesses leased space and operated on the Mall Proper including Apple, Microsoft, and Sephora.
13. Sears and Primark operated on the Sears Property.

³ The mall concourse comprises retailers that are generally classified in four categories: retailers under 10,000 square feet of leased area, retailers over 10,000 square feet of leased area, food court tenants and kiosk tenants. The contract rents paid by the Mall Proper tenant businesses, as well as the lease terms, vary widely. There is a growing trend towards the landlord granting generous tenant allowances for the initial fit up of the space. There is also a growing trend of the tenants negotiating gross, or modified gross, leases instead of triple net leases.

14. Dick's Sporting Goods, Forever 21, Brio Tuscan Grille, The Cheesecake Factory, and L.L. Bean leased space and operated on the Former Filenes Property.⁴
15. The Danbury Fair Mall comprises approximately 1.3 million square feet of gross building area. The Mall Proper has approximately 498,018 square feet of building area. The Former Filenes Property has approximately 169,904 square feet of building area. The Sears Property has approximately 178,516 square feet in building area.
16. Portions of the Danbury Fair Mall, such as Macy's and the Lord & Taylor building, are owned by parties other than the Plaintiffs, separately taxed, and not part of this tax appeal.
17. The Danbury Fair Mall is located in northern Fairfield County and is an excellent retail location because of the local demographics and excellent access roads.
18. The Danbury Fair Mall has good parking (both surface and garage), and the quality and condition of its facilities are very good.
19. The Danbury Fair Mall, as with most brick-and-mortar retailers, has experienced significant and increasing competition from online retailers.
20. The Danbury Fair Mall, as with most malls, has been financially stressed through the increased competition felt by their tenants and tenant financial struggles. At the Danbury

⁴ After Filenes vacated this property, it was redeveloped to accommodate multiple tenancies and subsequently rented to the noted tenants.

Fair Mall, the foregoing struggles are exemplified by the well know experiences of Sears and Filenes.

21. As of the Valuation Date, three of the then remaining four anchor department stores, as well as a number of mall concourse stores, were reasonably considered to be at risk.⁵
22. As of the Valuation Date, the Danbury Fair Mall primarily competed with online retailers and four regional malls – Stamford Town Center, Westfarms, Trumbull, and Connecticut Post.
23. As of the Valuation Date, a new mall was in the process of being built in Norwalk called the SONO Collection mall. Although no competition was occurring with this new mall which was not operational as of the Valuation Date, the fact that the new mall was being built was known and increased competition would be expected when it did open. The foregoing fact would have negatively impacted the proper valuation of the three properties at issue here as of the Valuation Date, as any purchaser of these properties would factor in both current competition and expected competition which was known as of the Valuation Date.

⁵ These reasonable concerns at the time were subsequently borne out by the bankruptcy of Lord & Taylor and the continuing struggles of Sears and JC Penney. The Lord & Taylor bankruptcy occurred after the Valuation Date and is therefore not factored into this decision, but is mentioned only to indicate that the real concerns felt by the Danbury Mall as of the Valuation Date regarding the financial condition of its anchor stores have been borne out. See also the testimony of Mr. Kerin under cross-examination.

24. The court found that the income valuation approach was the best valuation methodology to use for each of the three properties at issue.⁶
25. The court did not find the sales comparison valuation method to be appropriate or convincing in this case because (i) the court was not convinced that the comparables used were appropriate comparables, (ii) the evidence provided concerning the proposed comparables and their transactions was insufficient to properly support the conclusions made, and (iii) the evidence concerning the adjustments was insufficient to support the conclusions made.
26. The highest and best use of the three properties at issue is their current use.
27. For the Mall Proper, the court found most persuasive and accepted the income valuation approach as presented by the plaintiffs' expert, Mr. Williams, with one important change. The capitalization rate used by Mr. Williams was too high and inappropriate for valuing the Mall Proper. The court found as follows:
- a. Total Effective Gross Income - \$31,526,175
 - b. Operating Expenses before taxes and reserves - \$7,871,228

⁶ All of the experts used the income valuation method. Mr. Kenney and Mr. Kerin both only used the income valuation method, although Mr. Kerin did consider a transaction concerning the Sears Property. Mr. Williams used both the income valuation method and the sales comparison valuation method. For properties such as a mall which are developed and held by investors for the purpose of generating rental and related income, the income capitalization approach can be particularly relevant.

c. Net Operating Income before taxes - \$23,654,947⁷

d. Loaded Capitalization Rate - 7.9%⁸

e. Full Market Value of Real Estate - \$299,429,709⁹

28. For the Former Filenes Property, the court found most persuasive and accepted the income valuation approach as presented by the plaintiffs' expert, Mr. Williams, with two important changes. The capitalization rate used by Mr. Williams was too high and inappropriate for valuing the Former Filenes Property. Further, the market rent used by Mr. Williams was too low as applied to the space occupied by Forever 21. The court found as follows:

a. Total Effective Gross Income - \$3,783,361¹⁰

⁷ The net operating income used by Danbury in its revaluation was \$21,873,963.

⁸ The court arrived at this rate by using a 6.0% base capitalization rate and adding the tax load factor of 1.9% determined by Mr. Williams. The court notes that in its revaluation, Danbury used a base capitalization rate of 6.5% with a tax load factor of 2%. Further, in Danbury's revaluation, the city applied the same base and loaded capitalization rate to all three properties. Danbury's expert, Mr. Kenney, used a base capitalization rate of 6%. The unloaded capitalization rate for an A- graded mall in the third quarter of 2017 could have been as low as 5.5%. See plaintiffs' exhibit 1, page 47 of 228.

⁹ In the previous valuation cycle, Danbury had set a full market value of \$298,430,429 on this property.

¹⁰ The court accepted all of Mr. Williams gross revenue numbers, except that the court disagreed with the gross average rent of \$12.75 per square foot applied to Forever 21. The foregoing rent is an obvious and significant departure from the other rents paid at this property. Mr. Williams arrived at the Forever 21 rent by applying \$20 per square foot to the upper space and \$10 per square foot to the lower space. The court found this unjustified. The \$12.75 per square foot is the net base rent paid, however, the Forever 21 lease requires reimbursement for CAM and taxes yielding a gross overall rent of \$19.61 per square foot which rounds to \$20 per square foot. The court applied

- b. Total Expenses - \$607,332
- c. Net Operating Income - \$3,176,029
- d. Loaded Capitalization Rate - 7.9%¹¹
- e. Full Market Value of Real Estate - \$40,202,899¹²

29. For the Sears Property, the court found most persuasive and accepted the income valuation approach as presented by the plaintiffs' expert, Mr. Williams, with two important changes. The capitalization rate used by Mr. Williams was too high and inappropriate for valuing the Sears Property. The court also disagreed with Mr. Williams

\$20 per square foot as gross rent to all of the Forever 21 Space. This increased Mr. Williams's effective gross income by \$515,480. At \$20 per square foot, this is equal to the rent paid by Dicks Sporting Goods and lower than that paid by L.L. Bean in the same property. The court notes that some tenants are depended upon by the mall to draw clientele to the mall, and as a result of their draw are able to negotiate below market rent because the draw itself is consideration to the mall. Maserich and its tenants at the Danbury Fair Mall are sophisticated participants in this market who will presumptively arrive at market rents if all of the factors of consideration are taken into view.

¹¹ The court used the same capitalization rate as applied to the Mall Proper. These properties are directly connected and really make up a unit, accordingly, the application of the same capitalization rate appears appropriate. This is also consistent with the base capitalization rate of 6% found by Mr. Kenney on page 142 of 461 of defendant's exhibit F-1 with Mr. Williams tax load factor added. The court further notes that Danbury, in its revaluation, used a 6.5% base capitalization rate with a 2% tax load factor and applied the same capitalization rate to all three properties.

¹² In the previous valuation cycle, Danbury had set a full market value of \$10,452,286 on this property. However, that value had not taken into account the repurposing of this property from a single department store to a multitenant facility. This property was sold in July of 2006 from May Department Stores to Macerich for \$11 million. The court notes that Mr. Kenney's valuation of the Former Filene's Property was substantially less than Danbury's effective valuation.

determination of market rent and therefore with his gross income for this property.¹³ The court found as follows:

- a. Effective Gross Income - \$1,852,456
- b. Total Expenses - \$348,463
- c. Net Operating Income - \$1,503,993
- d. Loaded Capitalization Rate - 7.9%¹⁴

¹³ Mr. Williams arrived at his market rent by weight averaging the \$17 per square foot market rent actually paid by Primark with an estimated \$2 per square foot market rent to be paid by Sears. Although Sears occupies the lower level, which is inferior space, the inferiority of the space clearly does not justify the gulf between \$17 and \$2 per square foot. Mr. Williams's finding of a gross rent of \$2 per square foot for the Sears space was not supported and not believable. The court finds that the \$17 per square foot rent is the market rent for the upper floor, being the actual amount paid by Primark, and as found to be market by Mr. Williams and Mr. Kenney. The Primark lease at \$17 per square foot is essentially a gross lease with the landlord paying CAM and Primark only reimbursing tax increases above a reference year. Mr. Kenney had found that the market rent for the Sears space was \$14.00 per square foot. The court finds that the market rent for the Sears space was \$8.00 per square foot, a result between the determinations of Mr. Williams and Mr. Kenney. Accordingly, the weighted average market rent for the Sears Property is \$11.53 per square foot. Using the 90% occupancy used by Mr. Williams, the effective gross income is \$1,852,456. The court finds that the experts took extreme positions on this lower level market rent which were unjustified and that the average of their extreme positions yielded the best result. The court notes that Mr. Williams set his lower level rent based primarily on what he found Sears could reasonably pay. The court found that this was not an appropriate method of determining market rent. Lastly, the court found that Mr. Williams's comparable rents were not appropriately comparable and did not properly guide an appropriate conclusion. Mr. Kerin set the Sears market rent at \$11.43 per square foot and the Primark market rent at \$17 per square foot.

¹⁴ The court also found Mr. Williams' base capitalization rate of 8.5% to be extreme. The court chose a base capitalization rate of 6%. Danbury's expert, Mr. Kenney, on page 139 of 414 of defendant's exhibit B-1 used a 6% base capitalization rate. This is that same base rate used for the Mall Proper. To this base rate, the court added Mr. Williams' tax load factor of 1.9% to arrive at a loaded capitalization rate of 7.9%. These properties are directly connected and really make up a unit, accordingly, the application of the same capitalization rate appears appropriate. The Former Filenes Property and the Sears Property, each of which now comprise multiple tenants, are an integral part of the Danbury Fair Mall, and cannot be properly compared to stand alone department stores or to strip malls. The court further notes that Danbury, in its revaluation, used a 6.5% base capitalization rate with a 2% tax load factor and applied the same capitalization rate to all three properties.

e. Full Market Value of Real Estate - \$19,037,886¹⁵

30. The court found that the income valuation approach as deployed by Mr. Kenney, as to all three properties, was not reliable for several reasons. In developing a market net rent, he utilized a pool of leases which were mixed net leases, gross leases and modified net or gross leases without sufficient consideration of the varying terms of the leases and without a sufficient ability to explain the reliability of the conclusions he drew. He determined common area maintenance and marketing reimbursements such that the recoveries substantially exceeded 100% of the actual expenses. He directly deducted tenant allowances and an indeterminate period of expected capital expenditures from his gross market value without appropriate explanation as to the reasonableness of this approach. He misinterpreted the Primark sublease as a net lease when the terms thereof were clearly not net. With regard to the Former Filenes Property, he indicated he would apply a 2% management charge, when in reality he applied 3%. He used leases which were from a relatively distant period without being able to adequately explain his reasons therefor and his justification. He used unusual income such as lease termination fees and various recoveries to boost income that then became capitalized value without reasonably

¹⁵ In the previous valuation cycle, Danbury had set a full fair market value of \$9,825,000 on this property. As a further reference point, in April of 2015, Sears sold this property to a joint venture between Macerich and Sears for a reported value of \$25,465,989.

explaining his rationale for this approach. Mr. Kenney's valuation of the Mall Proper, in particular, appeared to the court to be an aberrant result in view of all of the evidence presented. The court found, in general, that Mr. Kenney's testimony was unreliable in this context. Despite the foregoing, the court did find some facts and some of the analysis within Mr. Kenney's reports reliable. The court has relied upon some facts and portions of analysis from Mr. Kenney's report to the extent that the court found reliable, appropriate, and needed.

31. The appropriate grading of the Danbury Fair Mall as of the Valuation Date for the purpose of setting a capitalization rate was A-.¹⁶

32. The appropriate loaded capitalization rate for all three properties was 7.9% as of the Valuation Date.

¹⁶ In view of the fact that the Valuation Date was October 1, 2017, the full year sales for 2016 should have been used in grading the mall instead of the then as yet incomplete sales for 2017. The 2016 sales for concourse stores under 10,000 square feet was \$610.16 per square foot. See plaintiffs' exhibit 1, page 49 of 228. Depending upon the grading scheme chosen, the criteria for an A- grade ranges as low as \$539 per square foot. See plaintiffs' exhibit 1, page 54 of 228. Mr. Kenney and Mr. Kerin applied a grade of A to the Danbury Fair Mall. Mr. Kerin found that an average unloaded capitalization rate for an A grade mall was 6.23% and used a 6.5% unloaded capitalization rate. The court's finding of an A- grade is between Mr. Williams' finding of B+ and Messrs. Kenney and Kerin findings of A.

STANDARD OF REVIEW:

A trial court hears tax appeals pursuant to General Statutes §§ 12-117a and 12-119 *de novo*, and, if the taxpayer is aggrieved, must arrive at its own conclusions as to the value of the property at issue by evaluating all of the evidence, including the opinions of appraisers. The court is to apply its general knowledge and experience in evaluating all of the evidence presented. See *Davis v. Westport*, 61 Conn. App. 834, 840, 767 A. 2d 1237 (2001).

The trial court must first determine whether the taxpayer is aggrieved by the assessment, specifically whether or not the assessment is excessive. A finding of aggrievement concerns both issues of fact and of law. An affirmative finding of aggrievement is a condition precedent to engaging the court's broad discretionary power to grant appropriate relief. In exercising its discretion, the court should correct the valuation if it is found to be excessive. Whether the property has been overvalued is a question of fact. It is the taxpayer's burden to show that the valuation is excessive, and the trial court must determine whether the taxpayer has offered sufficient, credible evidence that the subject property has been overvalued. When making a claim pursuant to § 12-119, the plaintiff must prove more than mere overassessment as in § 12-117a, proving instead that the assessment was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes applicable to determining the valuation of such property.

ANALYSIS:

The Plaintiffs have brought this appeal challenging the assessments of the three properties as of October 1, 2017 and on the grand lists for 2017, 2018, 2019 and 2020 pursuant to the provisions of General Statutes § 12-117a and § 12-119. The complaint in *Danbury Mall LLC v. Danbury* presents sixteen counts with a first series of counts challenging the assessments of the Mall Proper pursuant to § 12-117a for each of the foregoing periods (counts 1,5,9, and 13), a second series of counts challenging the assessments of the Mall Proper pursuant to § 12-119 for the foregoing periods (counts 2,6,10 and 14), a third series of counts challenging the assessments of the Former Filenes Property pursuant to § 12-117a for each of the foregoing periods (counts 3,7,11, and 15), and a fourth series of counts challenging the assessments of the Former Filenes Property pursuant to § 12-119 for the foregoing periods (counts 4,8,12, and 16). The complaint in *MS Portfolio LLC v. Danbury* presents eight counts with a first series of counts challenging the assessments of the Sears Property pursuant to § 12-117a for each of the foregoing periods (counts 1, 3, 5, and 7), and a second series of counts challenging the assessments of the Sears pursuant to § 12-119 for the foregoing periods (counts 2, 4, 6 and 8). In view of the court's factual findings, the court finds that the Plaintiffs have proven that they are respectively aggrieved as to each of the three properties, in that the court has found that the assessment for each of the three properties was excessive. However, the court finds that the overassessment of each of the properties was arrived at based upon good faith differences in judgment concerning the valuations. The court does not find that the assessment was manifestly excessive and could

not have been arrived at except by disregarding the provisions of the statutes applicable to determining the valuation of such property. Accordingly, the court will enter judgment for the plaintiff on the counts asserting claims pursuant to § 12-117a, but for the defendant on counts asserting claims pursuant to § 12-119.

The court is convinced that, as of the Valuation Date, the Danbury Fair Mall was subject to two significant negative financial pressures, each of which were projected at the time to increase in negativity for the mall.¹⁷ The first was competition from on-line sellers. As of the Valuation Date, this competition was significant and was expected to increase significantly. The second was that anchor department stores were, as of the Valuation Date, experiencing substantial financial distress. These distressed anchor department stores included Sears, JC Penney and Lord & Taylor. This financial distress was widely known and was recognized by the Danbury Fair Mall. Financial distress in the anchor department stores injures the mall in two ways. First, it places at risk the tenancy of the store. Second, it reflected a reduction in the ability of the anchor department stores to draw shoppers to the mall. In addition to the foregoing negative financial pressures, a new mall was under development in Norwalk. Although this new mall was not open as of the Valuation Date, and thus was not yet directly competing with the

¹⁷ These well-known financial pressures were reflected in the testimony of Mall General Manager Maura Ruby as well as that of the experts.

Danbury Mall,¹⁸ the new development was known, and the very fact that a new mall would be opening soon would detract from the value of the Danbury Fair Mall.¹⁹

In general, the court found Mr. Williams deployment of the income valuation approach to be reliable. However, the court found that it needed to make a few particularized adjustments. First, as to capitalization rates, the court found that the rates used by Mr. Williams were too high and that the same rate should be applied to all three properties. The court notes that in its revaluation, Danbury, through its expert Mr. Kerin, applied the same capitalization rate to all three properties. The court finds that these three properties comprising a mall concourse and its attached department store properties, some of which are now repurposed to multi-tenant properties,²⁰ are inextricably intertwined and best viewed together. Accordingly, the court found

¹⁸ Although not yet competing for sales, this new Norwalk mall was competing for tenants such as Nordstrom.

¹⁹ Any reasonable investor looking to acquire the Danbury Fair Mall would consider not only the current competition, but also any expected competition from known projects currently in development. A reasonable buyer would project competition into the future and model this expected competition into expected streams of income from the investment. This new expected competition would include new nearby malls in development as well as increased competition from on-line vendors, such as Amazon. In this regard, the court notes that the income valuation approach projects a stream of income into the future and applies a value to that projected future income. Changes in competition that are known and expected as of the Valuation Date would be factored into the foregoing valuation.

²⁰ The fact that the Former Filenes Property and the Sears Property are now repurposed into multi-tenant properties really makes them indistinguishable from the mall concourse, except as to the size of the tenancies, to which they are directly connected. Further, as to the Former Filenes Property and the Sears Property, Mr. Williams used comparisons to non-mall shopping centers, which comparisons the court found inappropriate for the properties at issue here. (See plaintiffs' exhibit 1 at page 137/228).

that, like Mr. Kerin, the court should apply the same capitalization factor to all three properties. As to the value of the capitalization rate to be applied, the court found that the base rates applied by Mr. Williams were too high. The court notes that Danbury, through Mr. Kerin, applied a base rate of 6.5% to all three properties. The court also notes that Mr. Kenney applied a base rate of 6% to the Mall Proper, and his research justified a base rate of 6% for the other properties as well. Finally, the court found that Mr. Williams underestimated the rating of the Danbury Fair Mall at B+. The court believes that the proper rating for the Danbury Fair Mall, for purposes of setting a base capitalization rate, was A- on the Valuation Date. For an A- Mall in the third quarter of 2017, Mr. Williams's research found that a base capitalization rate of as low as 5.5% could be appropriate. See plaintiffs' exhibit 1 at page 131/228. The court ultimately found that it should apply a base capitalization rate of 6% to all three properties and then add a real property tax factor of 1.9%.²¹ Accordingly, the court evenly applied a loaded capitalization rate of 7.9% to all three properties.

The second factor from Mr. Williams' income valuation approach that the court modified was the market rent to be applied to the Forever 21 space in the Former Filenes Property. This space is essentially the space of a small mall anchor with both the upper and lower level having direct mall concourse access and exposure. This gives Forever 21 direct access and exposure to

²¹ The court rounded the tax load factor noting that Mr. Williams used 1.932% and Mr. Kerin used 2%. Mr. Kenney used only a partial load factor. The court concludes that a loaded capitalization rate of 7.9% is appropriate.

the mall traffic on both the upper and lower mall concourses. The court disagreed with Mr. Williams' conclusion that the lower Forever 21 space was substantially inferior. Further, Mr. Williams, throughout his income analysis, was seeking market gross rents. The actual lease in place with Forever 21 on the Valuation Date provided for rent and reimbursements at approximately \$19.61 per square foot. The court determined that a gross market rent of \$20 per square foot was appropriate. This is more consistent with the rents paid by other tenants in the Former Filenes Property even though Forever 21 possesses the prime space on that property. It is also consistent with the actual lease.²² This change resulted in an additional \$515,480 in income for this property.

The last change was to the gross rent applied to the Sears tenancy at the Sears Property. Mr. Williams applied a gross rent of \$2 per square foot. On a gross basis, Mr. Williams proposed rent would produce a loss, recognizing that \$2 per square foot is insufficient to even reimburse the proportional taxes and common area charges. It is also inconsistent with the \$17 per square foot gross rent paid by Primark at the same property. Although Primark's space is preferred, it cannot justify the gulf between \$17 and \$2 per square foot gross rent. In order to address this, the court arrived at a gross market rent for Sears at a reasonable \$8 per square foot. The foregoing determination of market rent was in between the market rent found by Mr. Williams and the

²² In determining market rents, the court considered the leases in place, the timing of the leases in relation to the Valuation Date, the testimony and analysis of the experts and the relevant data presented at trial.

market rent found by Mr. Kenney, and was closer to the market rent found by Mr. Kerin. This rent is more consistent with the \$17 per square foot gross rent actually paid by Primark, allowing for a reasonable discount in view of the less preferred space.

With the foregoing changes in place, the court arrived at the following rounded full market values for the properties as of the Valuation Date:

Mall Proper: \$300 million

Former Filenes Property: \$40.2 million

Sears Property: \$19 million

The court's determinations of fact and value were made based upon the court's evaluation of the evidence presented at trial in this matter.

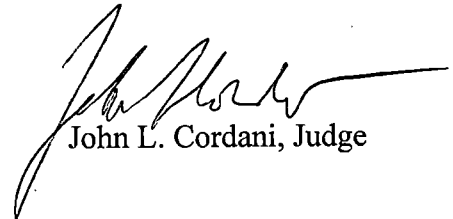
JUDGMENT:

The court enters judgment in the case of *Danbury Mall LLC v. Danbury* for the plaintiff on counts one, five, nine, thirteen, three, seven, eleven, and fifteen, and for the defendant on the remaining counts. The full market valuation of the Mall Proper shall be \$300 million, and for the Former Filenes Property shall be \$40.2 million for the periods of time challenged in the complaint. Taxes should be assessed based upon seventy percent of the foregoing full market values.

The court enters judgment in the case of *MS Portfolio LLC v. Danbury* for the plaintiff on counts one, three, five and seven, and for the defendant on the remaining counts. The full market

valuation of the Sears Property shall be \$19 million for the periods challenged in the complaint.

Taxes should be assessed based upon seventy percent of the foregoing full market value.

A handwritten signature in black ink, appearing to read 'John L. Cordani', with a long horizontal flourish extending to the right.

John L. Cordani, Judge